

IN THE HIGH COURT OF SINDH, KARACHI

C.P.No.S-882 of 2003

Tanveer Hidayatullah Hashmi and another

v/s.

Mst. Fozia Naheed and others

Before: Justice Mrs. Ashraf Jahan.

Petitioners : Through Raja Sikandar Khan Yasir,
Advocate

Respondents : Through Ms. Farah Khan, Advocate
for Respondent No.1.

Date of Hearing : 04.12.2017

Date of Judgment : 15.12.2017

JUDGMENT

Mrs. Ashraf Jahan, J.:- By way of present petition, the Petitioners have challenged the Judgment dated 22.10.2003 and Decree dated 27.10.2003, whereby the learned District Judge, Karachi (Central) allowed the Family Appeal No.63/2003 preferred by Respondent No.1 against Judgment dated 28.02.2003 in Family Suit No.583/1996.

2. The facts leading to the institution of instant petition are that Respondent No.1 got married with Petitioner No.1 on 28.12.1989 at Karachi. Her dower was fixed at Rs.25,000/-, as deferred which remained unpaid. Further, case of Respondent No.1 (Plaintiff in Suit No.583/1996) that at the time of her marriage with the Petitioner No.1 her parents had given her dowry articles worth Rs.400,000/- as per list. After marriage Petitioner No.1 neglected her and left her at

the mercy of his parents and himself shifted to UAE; she was maltreated by the parents of Petitioner No.1, therefore, she left the house of the Petitioners in three clothes alongwith her minor son and went to the house of her parents. Thereafter, she filed suit for maintenance, which was decreed. In the meantime, Petitioner No.1 also solemnized second marriage at UAE without her consent, therefore, she filed suit for dissolution of marriage, which was decreed. However, her dowry articles remained at the house of the Petitioners and were being misused. She requested for return of her dowry articles but her in-laws refused to return the same. Hence she filed suit for recovery of dower as well as dowry articles.

3. The Petitioners filed their joint written statement, alleging therein that suit was hit by the provisions of Act 43 of 1976 (The Dowry and Bridal Gifts Restrictions Act, 1976). They further submitted that as Respondent No.1 was still under the wedlock, therefore, she was not entitled for the dower or the dowry articles. They denied the allegation regarding maltreatment and second marriage of Petitioner No.1. However, it was asserted that Respondent No.1 at the time of leaving the house had already taken away all the ornaments and other valuables.

4. The trial Court out of pleadings of the parties framed the following issues:

- i. Whether the suit is not maintainable under the law?
- ii. Whether the suit is barred under the provisions of Act 43 of 1976?
- iii. Whether the defendant No.1 has contracted the second marriage without prior permission of plaintiff?
- iv. Whether the plaintiff is entitled for relief as claimed?
- v. Whether the plaintiff was given dowry articles as alleged?
- vi. What should the decree be?

5. Both the parties led evidence and after hearing their counsel, the Family Judge, Karachi (Central) vide Judgment dated 28.02.2003 dismissed the suit, which was successfully challenged by Respondent No.1 before the Court of District Judge, Karachi (Central). The learned District Judge allowed the appeal vide Judgment dated 22.10.2003, which is assailed in present constitution petition.

6. I have heard the learned counsel appearing for the Petitioners as well as Respondent No.1. It is contended by learned counsel for the Petitioners that the list in respect of dowry articles produced by Respondent No.1 in her suit was not original; neither it was signed by any person nor there was receiving of anybody from the family members of the present Petitioners. Therefore, the Civil Court rightly dismissed the suit of the present Respondent No.1, but the first Appellate Court without considering the actual facts illegally allowed the appeal and set aside the judgment passed by the trial Court. Per learned counsel, the list which was submitted by Respondent No.1 cannot be believed in any manner, as even the valuation of the items was not disclosed. Further no receipts were enclosed with it. Thus, filing of suit for return of dowry articles is nothing but just an afterthought and therefore, present petition may be allowed and the order passed by learned first Appellate Court may be set aside.

7. On the other hand, it is argued by learned counsel appearing for Respondent No.1 that at the time of her marriage she was given dowry consisting valuable articles as mentioned in list as per custom in our society, which are still available at the house of Petitioners. Per learned counsel, the original list was given to the mother of Petitioner No.1, therefore, it was not possible for Respondent No.1 to

produce the original list at the time of evidence before the Trial Court. Her on oath statement is there, therefore, she is entitled for return of her dowry articles.

8. I have considered the arguments advanced before me and have perused the record, which goes to show that before the Family Court Respondent No.1 has examined herself and produced the photo copy of list of dowry articles given to her at the time of marriage. No doubt that the list submitted by her is photocopy. In this regard explanation given by her is that original was given to her mother-in-law. The objection raised by the Petitioners that the above list does not show receiving from any family member of the Petitioners is devoid of merit as normally no one gets receiving of such list at the time of marriage. In this respect the on oath statement of Respondent No.1 is of material value, she was cross-examined at length but her evidence has remained unshaken. Record reveals that pleadings and evidence of Respondent No.1 are consistent and confidence inspiring.

9. Against this when the pleadings and evidence of Petitioner No.1 is examined it reveals that though in written statement filed before the Family Court Petitioners have taken the plea that no dowry was given to Respondent No.1. But when the evidence of present Petitioner No.1 is examined it reveals that in his evidence he has deposed that though Respondent No.1 left his house in three clothes, but afterwards she came back and taken away not only her own jewelry but jewelry of his mother as well. This piece of evidence reflects that there was some jewelry of Respondent No.1 lying at the house of present Petitioners, but at the same time it is strange to note that once Respondent No.1 had left the house of Petitioners due

to strained relations with her in-laws then how she came back to collect not only her own jewelry but also the jewelry of her mother-in-law, and inspite of that no action was taken by her in-laws in this regard. During the cross examination of Petitioner No.1, the question was put by the learned counsel for Respondent No.1 as to whether any F.I.R. was lodged against such removal of jewelry of the mother of Petitioner No.1, but Petitioner No.1 replied that no such F.I.R. or complaint was made. This attitude on the face of it seems to be totally unnatural, even in his written statement no such plea was taken. This piece of evidence has made the whole evidence of Petitioner No.1 doubtful and he does not seem to be a truthful witness. Reverting to the claim of Petitioners it is evident that it is only for Rs.400,000/- for long list of dowry items, therefore, it appears that learned first Appellate Court rightly allowed the appeal. It may be added here that in the hierarchy of family laws appellate Court is final Court as regards finding of facts, therefore, its findings, unless arbitrary, perverse or illegal cannot be interfered with by this Court in exercise of its jurisdiction under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973.

10. In view of above discussion, I am of the considered opinion that the first Appellate Court has rightly appreciated the evidence brought on record. The Judgment dated 22.10.2003 is based on logical reasoning, therefore, does not call for any interference. Resultantly present petition is dismissed and the Judgment dated 22.10.2003 is upheld.

Judge